# BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

JOANN M. JOSEPH	)
Claimant	
VS.	
	Docket No. 1,029,471
COX COMMUNICATIONS	)
Respondent	)
AND	
NEW HAMPSHIRE INSURANCE COMPANY	)
Insurance Carrier	)

### <u>ORDER</u>

Claimant appealed the August 17, 2006, preliminary hearing Order entered by Administrative Law Judge Thomas Klein.

#### ISSUES

Claimant alleges she was injured at work on April 26, 2006, when a co-worker allegedly punched her in the back of her upper right arm. In the August 17, 2006, preliminary hearing Order, Judge Klein denied claimant's request for workers compensation benefits. The Judge held that claimant failed to prove (1) her alleged symptoms resulted from being struck, (2) she was struck by a co-worker, and (3) the alleged incident arose out of and in the course of her employment with respondent.

Claimant appealed the August 17, 2006, Order but did not file a brief with this Board. Consequently, the Board does not have the benefit of claimant's analysis of the facts or law. Likewise, respondent and its insurance carrier did not provide the Board with a brief setting forth their contentions in this claim. Nevertheless, it appears the only issue before the Board on this appeal is whether claimant proved her present symptoms are the result of an injury that arose out of and in the course of her employment with respondent.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board concludes the preliminary hearing Order should be affirmed. Judge Klein concluded claimant failed to satisfy her burden of proof. The Board agrees.

Claimant alleges a co-worker punched or elbowed her on the back of her right arm. The battery allegedly occurred on April 26, 2006. According to claimant, the force of the strike took her breath away. Nonetheless, claimant did not report the incident to anyone in a supervisory position until the next day. No one witnessed the alleged incident. And the person who is accused of striking claimant denies striking her.

The record indicates claimant sought medical treatment at the Via Christi Regional Medical Center emergency room on April 28, 2006. Although the hospital's notes are not very legible, they appear to indicate that claimant reported right arm pain, numbness, and coldness that started when a co-worker punched her in the arm. Those notes also indicated claimant was beginning to experience neck pain and back pain. Finally, the records indicate the emergency room nurse did not see any redness or bruising on the right arm.

In early June 2006, claimant eventually saw Dr. Robert L. Eyster. The doctor noted claimant had right trapezius muscular irritation, neck pain, and right shoulder pain. Dr. Eyster prescribed physical therapy for claimant's neck and medications. In a June 2, 2006, letter to Dr. Patricia Bledsoe, Dr. Eyster set forth his findings and recommendations. Dr. Eyster's letter, however, did not relate any of claimant's symptoms or her need for medical treatment to the alleged incident at work.

And in a letter to Dr. Bledsoe dated July 6, 2006, Dr. Eyster wrote that claimant's deltoid muscular pain was consistent with somebody striking the muscular region of the upper arm. That letter, however, did not indicate that claimant needed any medical treatment for that symptom.

Considering the entire record, the Board agrees with Judge Klein that claimant failed to prove she was struck at work by a co-worker and failed to prove her present need for medical treatment resulted from being struck in the back of her upper right arm.

WHEREFORE, the Board affirms the August 17, 2006, Order entered by Judge Klein.

IT IS SO ORDERED.

Dated this day of October, 2006.

#### **BOARD MEMBER**

Joseph Seiwert, Attorney for Claimant
 Jeffery R. Brewer, Attorney for Respondent and its Insurance Carrier
 Thomas Klein, Administrative Law Judge